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HAROLD B. WILLEY, CL

IN THE

Supreme Court of the United States

OCTOBER TERM, 1954.

No. 416

ANTHONY G. "AMOS" AMADIO,
Petitioner,

vs.

UNITED STATES OF AMERICA,
Respondent.

PETITION FOR A WRIT OF CERTIORARI
To the United States Court of Appeals for the Seventh Circuit.

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THE GUNTHORP-WARREN PRINTING COMPANY, CHICAGO

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PETITION FOR A WRIT OF CERTIORARI

To the United States Court of Appeals for the Seventh Circuit.

Petitioner prays that a writ of certiorari issue to review the judgment of the United States Court of Appeals for the Seventh Circuit, entered in the above entitled case on the 30th day of August, 1954.

OPINIONS BELOW.

The opinion of the United States Court of Appeals for the Seventh Circuit affirming the above judgment is printed in Appendix A, page 21.

The opinion of the United States District Court for the Southern District of Indiana, Evansville Division, was entered on the 3rd day of October, 1953, and appears in Appendix D, page 49.

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JURISDICTION.

The judgment of the United States Court of Appeals for the Seventh Circuit was entered on the 30th day of August, 1954. Petitioner's petition for rehearing was timely filed as provided by the rules of the United States Court of Appeals for the Seventh Circuit, to-wit: September 13, 1954, and petitioner's petition for rehearing was denied on the 21st day of September, 1954.

This petitioner timely filed his application for stay of mandate pending final determination of this cause by the Supreme Court of the United States upon his application for writ of certiorari; petitioner further says that said application for stay of mandate pending final determination of this cause by the Supreme Court of the United States upon his application on writ of certiorari was granted on the 28th day of September, 1954 in accordance with Rule 25 (b) of the United States Court of Appeals for the Seventh Circuit.

The jurisdiction of this court is invoked under 28 U. S. C. Section 1254.

Jurisdiction was conferred upon the United States Court of Appeals for the Seventh Circuit by 28 U. S. C. 1291.

QUESTIONS PRESENTED.

I. Constitutional and Statutory.

The indictment (Appendix C, page 46), purportedly based upon federal statutes commonly known as the White Slave Act, 18 U. S. C. Sections 2421 and 2422 on which petitioner was convicted is in direct conflict with the existing law of our land and Article One (1), Paragraph Eight (8) of the Constitution of the United States of America, in this:

(1) The exclusive right to establish and define criminal

laws is vested in the Congress of the United States of America, as provided by the Constitution of the United States, Article One (1), Paragraph Eight (8).

(2) Chief Justice Major's dissenting opinion (Appendix A, p. 15) said: "The indictment was couched in language of the indictment in the *Lewis* case, 110 F. (2) 460. This must be of novel theory and I think *unsound*. It has always been the rule * * * that an indictment must be predicated upon language of statute." Lower court misconstrued the intent of Congress as set forth in *Athanasaw* v. *United States*, 33 S. Ct. 285.

(3) A federal judiciary cannot create crimes by judicial initiative. *Morrissette* v. *United States*, 342 U. S. 246. As late as May 22, 1954 in *Standard* v. *Olsen*, 74 St. Ct. 768, the court said:

> "It is for Congress, not the courts, to write the law."

(4) There is nothing in the above statutes in question which Congress passed that prescribes the transportation of a female for "employment" in an "environment" which "would tend to cause her to give herself up to a condition of debauchery which would *eventually* and *naturally* lead to a course of sexual immorality."

(5) No act is punishable as a crime unless it is specifically condemned by common law or statute duly enacted by legislature, as held in *Hotch* v. *United States*, 212 F. (2d) 280.

(6) The indictment, as it now stands, is based upon *future acts* or *contingent acts* that are not positive in nature and charge and may never occur. The federal law of the land is, as held in *United States* v. *George*, 338 U. S. 14, 57 L. Ed. 14, states:

> "There can be no constructive offense, and before a man can be punished his case must be plainly and unmistakably within the statute."

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(7) The indictment and conviction of the petitioner violated his constitutional rights as protected by the Fifth Amendment to the Constitution of the United States of America, in this: "No person * * * shall be deprived of life, liberty or property without due process of law."

II. The Petitioner Not Convicted by Substantial Evidence.

The substantial rights of the petitioner were materially affected by the admission over the petitioner's objections of much admitted *improper* and *prejudicial* evidence.

The evidence, improperly admitted by the lower court, over the petitioner's objections related principally to the alleged misconduct of certain government witnesses that occurred some four months subsequent to the time the girls named in the two counts of the indictment under consideration were allegedly transported from Evansville, Indiana to Calumet City, Illinois, for employment.

III. The Petitioner Did Not Receive a Fair Trial According to the Standards and Principles of Our Great Nation as Heretofore Established by the Rules of This Court.

The majority opinion of the United States Court of Appeals for the Seventh Circuit admits that it was error but held that it was not prejudicial, contrary to the holding of this court in *Krulewitch* v. *United States,* 336 U. S. 440, 453, wherein this court said:

> "But the order of proof of so sprawling a charge is difficult for a judge to control. As a practical matter, the accused often is confronted with a hodge-podge of acts and statements by others which he may never have authorized or intended or even known about, but which help to persuade the jury of existence of the conspiracy itself. * * * The naive assumption that prejudicial

effects can be overcome by instructions to the jury, *Blumental* v. *United States*, 332 U. S. 539, 559, all practicing lawyers known to be *unmitigated fiction.*"

Chief Justice Major in his dissenting opinion, Appendix A, page 15, stated:

"My study of the record leads to the firm conclusion that the defendant did not have a *fair trial.*"

IV. Improper Construction of Judicial Code 28 U. S. C. 391 as Amended (Discussed Later).

V. Failure to Grant Bill of Particulars Under Facts of This Case Violated Petitioner's Constitutional Rights as Recorded by the Sixth Amendment to the Constitution of the United States.

VI. The Substantial Rights of the Petitioner Have Been Materially Effected by the Lower Court's Erring in:

(1) Refusing to sustain the petitioner's motion to dismiss.

(2) Refusing to sustain the petitioner's motion for a bill of particulars.

(3) Admitting testimony not germane to the issues.

(4) Declaring certain government witnesses hostile and then admitting testimony not germane to the issues.

(5) Admitting conversations not held in the presence or knowledge of the petitioner in violation of the general rules of hearsay evidence.

(6) Admitting the improper cross-examination of the petitioner.

(7) Refusing to sustain the petitioner's motion for a mistrial.

(8) Refusing petitioner's motion for a judgment of acquittal at the close of Government's evidence.

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(9) Refusing petitioner's motion for a judgment of acquittal at the close of all the evidence.

(10) Refusing to give certain instructions tendered by the petitioner as herein set out.

THE STATUTES INVOLVED.

The pertinent statutory provisions are printed in Appendix B, page 43, and are as follows, to-wit:

18 U. S. C. Sections 2421 and 2422.

Constitution of the United States, Article I, Paragraph 8.

Constitution of the United States, Fifth Amendment.

Constitution of the United States, Sixth Amendment.

28 U. S. C. Section 1254.

28 U. S. C. Section 1291.

Section 269, Judicial Code, as amended by U. S. C. A. Section 391.

CONCISE STATEMENT OF CASE CONTAINING FACTS MATERIAL TO THE CONSIDERATION OF THE QUESTIONS PRESENTED.

The jurisdiction of the court of the first instance arose from the hereinafter referred to indictment purportedly based upon 18 U. S. C. Sections 2421 and 2422.

The petitioner was originally charged in five counts of an indictment (Appendix C, page 46) of purportedly violating the White Slave Act, by either inducing to travel or transporting certain females from Evansville, Indiana to Calumet City, Illinois, for an immoral purpose, to-wit: to place them in *employment* in an *environment* which would tend to cause said girls to give themselves up to a condition of debauchery, which would eventually and naturally lead to a course of sexual immorality.

Count Five (V) of the indictment is the only count of said indictment that the United States District Attorney saw fit to follow the exact language of the state as passed by Congress. The petitioner was found *not guilty* on that count as well as Counts Two (II) and Three (III) of said indictment (R. 472).

The petitioner was found guilty on Counts One (I) and Four (IV) of said indictment and received a sentence of three years on each count, said sentences to run concurrently.

Therefore, the conviction of the petitioner revolves around *employment* and *environment alone* and not on *prostitution and actual acts* of *debauchery or immoral acts* on the part of the girls named in the indictment. Neither is the petitioner's conviction based upon any unlawful or *immoral purpose* or intent at the time of the alleged transportation of said girls named in said indictment, but was based principally on the conduct of government witnesses, none of which was even known to the petitioner and none of which were known by the girls named in the indictment.

It clearly raises the issue of whether or not employment as waitresses in a tavern duly licensed by the State of Illinois and the City of Calumet, Illinois, which is located in a two-block area devoted principally to taverns and show business, featuring female dancers commonly known as "strip tease" dancers (R. 350), together with the fact that the waitresses of said tavern were permitted to sit at bars with men customers but instructed by the management not to drink intoxicating liquors (R. 33-58) nor to become intimate or personal with or have dates with said customers (R. 57), constitutes *employment* in an *environment* which would tend to cause a girl to give herself up to a condition of debauchery, which would eventually and naturally lead to a course of sexual immorality making

transportation of women for such *employment a Federal offense without having first had Congress so declare it.*

The petitioner's place of business did not have a girl show that featured "strip tease", but did have a small "hillbilly" type of band that played for dancing.

During the years in question, 1952 and 1953, the petitioner spent a greater portion of his time in Evansville, Indiana, where he was engaged in the oil business and left the operation of his tavern to his employees (R. 337-359).

While in Evansville he met the other named defendant, Grover C. Craig, who on one or two occasions made a social trip to Calumet City with the petitioner, but at no time was the said Grover C. Craig an employee or agent of the petitioner (R. 366-367).

The said Grover C. Craig, sometime in June, 1952, advised the petitioner that he had a friend, Mary Katherine (Hamilton) Huffman, who needed a job to support her mother and asked if he (the petitioner) could get her a job in Calumet City. The petitioner agreed to do so and did, after getting written permission from said Mary Katherine (Hamilton) Huffman's mother (R. 343, Exhibit M).

Thereafter on the date charged in said indictment, the petitioner, Grover C. Craig and said girl drove to Calumet City, where she was to work as a waitress or hostess or a "B" girl as her duties were frequently called throughout the trial (R. 31).

The girls named in the indictment were given rooms in a licensed rooming house on the second floor above a tavern known as the Four Aces (R. 56); this rooming house was owned and operated by the petitioner's brother (R. 294). The petitioner had nothing to do with the operation of said rooming house.

The girls were not forced to use these rooms; they had a private entrance; separate keys were furnished the girls, and they were instructed no men were knowingly permitted on the premises (R. 57).

The evidence further shows that Mary Katherine (Hamilton) Huffman, after going to Calumet City for the purposes above set forth, made frequent trips from Calumet City to her home in Evansville, Indiana, to visit her mother, each time returning to her job (R. 42).

The prosecuting witness, Mary Katherine (Hamilton) Huffman, testified that after she had been in Calumet City approximately three weeks, Grover C. Craig unsuccessfully attempted to have sexual relations with her (R. 45) and some two or three days later, the same being more than three weeks after the alleged transportation, she charged the petitioner of having sexual relations with her (R. 46).

This testimony is not supported or corroborated, the petitioner denying that he had ever had sexual relations with her (R. 345) and never at any time attempted to commit any immoral acts with any of the girls named in the indictment but that he had instructed the girls to conduct themselves as ladies.

The respondent's own witnesses testified that none of the girls were bothered or molested by anyone, excepting the contradicted statement of Mary Katherine (Hamilton) Huffman. They all stated they saw nothing different than what they saw in their own home town; that there was nothing that they saw where they were working or in Calumet City that would or did lead them to become immoral; and they all returned to Evansville as good girls as they were before they left (R. 135-151).

There was some evidence offered by the government that, months after the alleged transportation of the girls named in the indictment, one Lois Stewart Lohannas sug-

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gested to Mary Katherine (Hamilton) Huffman that she could make some money if she would go out with men. This was denied by Mrs. Lohannas (R. 274), but even if it did occur, it occurred months after the alleged transportation and there is absolutely no showing that the petitioner had any knowledge that said proposition had been made or would be made.

The Government in its effort to prove an immoral *environment* presented a few handpicked witnesses of questionable morals and character, to-wit: Geno Sarbo, Mary Patricia Swartz, Juanita Rose Cooper and Ann Christine Cresno, and offered their testimony of *their* alleged misconduct in Calumet City at a period as late as December, 1952 and January and February, 1953.

In further support of its theory that transporting a female from Evansville, Indiana to work in the theatrical area of Calumet City constituted a federal violation, in its attempt to prove the environment to be bad, the government offered the evidence of alleged acts of "necking" and "petting" among the patrons of some of the taverns, but there was no proof offered that the girls named in the indictment were subjected to such acts; neither was there any proof in the record to show that the petitioner intended that they should participate in such conduct at the time of the alleged transportation or at any time thereafter.

The respondent, over the objections of the petitioner, introduced the testimony of Juanita Cooper, a self-admitted prostitute (R. 182-185), who admitted she committed acts of prostitution above the Four Aces in Calumet City in January, 1953 (R. 182), several months after the alleged violation named in the indictment. There is no showing that her alleged acts were known to the petitioner at any time, much less at the time of the transportation, nor was her conduct known to the girls named in the indictment so as to have any influence over them.

The respondent's witness, Ann Christine Cresno, was questioned about whether or not she was an abortionist (R. 213) and had been called on one occasion to Calumet City for that purpose, which she denied (R. 213). There is no connection between that testimony and the petitioner or the issues in the case, as by her own testimony she admitted she did not become acquainted with the petitioner until September of 1953, two days before the trial started in Evansville, Indiana (R. 212). The court improperly declared the witness hostile (R. 216) and permitted improper and prejudicial examination by District Attorney.

The respondent's witnesses, Geno Sarbo and Mary Patricia Swartz, prior to the trial (R. 108) and again in open court (R. 109), demanded of the district attorney that they be advised of their constitutional rights and in substance not be required to testify to matters that might tend to incriminate them (R. 109). The court permitted vigorous cross-examination of these witnesses in the presence of the jury, over the objections of the petitioner (R. 109-110), about matters of their personal conduct, to-wit: whether or not they had had sexual relations during the months of January and February, 1953, five months after the date of the offenses named in the indictment (R. 109-110, 112-113). The court admitted this testimony on the ground they were *hostile witnesses.*

This clearly raises the question, is the improper and immoral acts of a few people of a city the size of Calumet City sufficient to legally declare it an "environment" which would tend to cause a girl working there to give herself up to a condition of debauchery, which would "eventually" and naturally lead to a course of sexual immorality, thereby making it a federal offense to transport in interstate commerce a female to work in said "environment" in a legal place of business.

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Frieda (West) Brumley, the girl named in Count One (I), was not acquainted with the petitioner and did not become acquainted with him until she arrived in the State of Illinois (R. 73). She was a friend of the co-defendant, Grover C. Craig (R. 71), and went on her own volition from Evansville, Indiana to said city for the purpose of obtaining employment as a waitress (R. 72). There is no evidence that the petitioner induced her to travel in interstate commerce and certainly there was no evidence that such travel was for an immoral purpose, the sole purpose being to help the girl get a job and was done at the instance and inducement of the defendant, Grover C. Craig, and not the petitioner.

The United States district attorney further was permitted by the lower court on cross-examination of this petitioner to question him about an alleged conviction for disorderly conduct which the district attorney knew did not exist and was never proven but was asked by the district attorney for the sole purpose of establishing undue prejudice against the defendant (R. 361).

On the 31st day of March, 1953, the petitioner filed his motion for a bill of particulars (R. 8), which said motion was overruled by the court on May 4, 1953 (R. 20).

On the 31st day of March, 1953, the petitioner filed his motion to dismiss (R. 7), which motion was overruled by the Court (R. 20).

Petitioner charges that each of the above motions should have been sustained and the lower court erred in so doing.

At the close of the government's evidence, the petitioner filed his motion for judgment of acquittal (R. 21), which said motion was overruled (R. 463). Again at the close of all the evidence, the petitioner filed his motion for judgment of acquittal (R. 463), which said motion was overruled (R. 463). Both of said motions for judgment of

acquittal were timely filed and it was error on the part of the lower court to deny.

During the trial, the petitioner filed his motion for a mistrial (R. 170), which said motion was overruled by the court (R. 170). This related to the introduction of the testimony of the government's witness, Edwin Keck.

REASONS FOR GRANTING WRIT.

I. Invasion by Courts of Rights Vested Only in Congress.—This case clearly involves the interpretation and expansion, by judicial initiative, of the federal statutes commonly known as the White Slave Act, 18 U. S. C. Sections 2421 and 2422.

The petitioner charges that the indictment under which he was convicted is a violation of Article One (1), Paragraph Eight (8) of the Constitution of the United States.

The indictment and trial under which the petitioner was tried and convicted violated the petitioner's constitutional rights as protected by Amendment Five (5) of the Constitution of the United States, in this, to-wit: "No person shall be * * * deprived of life, liberty or property, without due porcess of law."

It was held by this court in *Mortensen* v. *United States*, 322 U. S. 368, 376, 88 L. Ed. 1331, 1336:

> "Whatever their faults, petitioners are entitled to have just and fair treatment under the law and not to be punished for transporting girls in interstate commerce for a purpose wholly different from any of the purposes condemned by Congress."

In this case the respondent omitted the principal statutory words of the White Slave Act, passed by Congress, to-wit: "*for the purpose of prostitution or debauchery*

** * * or with the intent and purpose to induce, entice, or compel such woman or girl to become a prostitute or give herself up to debauchery * * **". The district attorney then in preparing his indictment attempted to combine part of his theory with some of the dictum taken from a court decision, to-wit: *United States* v. *Lewis*, 110 F. (2d) 460, charging in the indictment as follows: "place her in employment in an environment" in Calumet City, Illinois, "which would tend to cause her to give herself up to a condition of debauchery, which would eventually and naturally lead to a course of sexual immorality."

The above words, incorporated into the body of the act commonly known as the White Slave Act, 18 U. S. C. Sections 2421 and 2422, in effect created a new federal statutory offense, which makes transporting a female in interstate commerce to work as a waitress or hostess or show girl in an enviornment consisting of night club life or show business a statutory offense.

II. Theory of Indictment Unsound and Untenable.—The petitioner urges that this petition should be granted for the reason that the Court of Appeals has misconstrued the Supreme Court decision of *Athanasaw* v. *United States*, 33 S. Ct. 285.

This charge and evidence introduced by the respondent, in support thereof, goes beyond the scope and intent of Congress at the time the White Slave Act was passed.

The theory of the government as propounded in the indictment is unsound and untenable and if allowed to remain on record will create much confusion in similar matters in federal courts throughout the country as it will leave the doors open for many varied and ridiculous constructions of the federal statutes involved.

III. Duty of This Court to Decide for Itself Construction of Federal Statutes Upon Which Constitutional Issues Rest.—This court as late as February 8, 1954 in *Kern-Limerick, Inc. et al.* v. *Scurlock*, 74 S. Ct. 403, 410 stated:

> "Such a conclusion as to the meaning of the quoted words would deny the long course of judicial construction which establishes as a principle that the duty rests on this Court to decide for itself facts or constructions upon which federal constitutional issues rest."

IV. The Indictment and the Conviction of This Petitioner Is in Direct Conflict With the Existing Law of Our Land.—In this, a federal judiciary cannot create crimes by judicial initiative, as held in *Morrissette* v. *United States*, 342 U. S. 246, 72 S. Ct. 240, and, as late as May 22, 1954 in *Standard* v. *Olsen*, 74 S. Ct. 768, wherein the court stated:

> "It is for Congress, not the courts, to write the law."

If this decision is permitted to stand, it violates the recognized rule of law as stated in *United States* v. *George*, 338 U. S. 14, 57 L. Ed. 14, wherein the court said:

> "There can be no constructive offense, and before a man can be punished his case must be plainly and unmistakably within the statute."

V. Attempt to Remove Statutory Requirement of Criminal Intent.—If this case is permitted to stand, it alters the criminal statute as passed by Congress by removing therein the *unlawful* or *criminal intent* at the time of furnishing the alleged transportation. Without exception, the gist of all White Slave violations have been the *intent and purpose at the time of the furnishing of the alleged transportation*, not what occurred at subsequent times, months after the alleged transportation.

This court held in *United States* v. *Fox*, 95 S. Ct. 670, 671, 24 L. Ed. 538, 539, that criminal intent cannot be imputed on *subsequent independent transactions.*

Never before has *criminal intent* attempted to be proven by the conduct of third parties unknown to the party charged.

VI. Substantial Rights of Petitioner Affected.—Petitioner contends that his conviction was not supported by competent and/or substantial evidence, and, as a result thereby, did not receive a *fair trial* according to the standards and principles of our great nation as heretofore established by the rules of this court.

One of the grounds charged by the petitioner that he did not receive a fair trial was that the lower court, improperly and with prejudice, permitted the government to impeach numerous government witnesses after improperly declaring said government witnesses hostile, this being done by the United States district attorney for the sole purpose of getting improper and prejudicial evidence before the jury, the same being in conflict with the rule of law founded by this court in *Burdeau* v. *McDowell*, 256 U. S. 465, 475, 51 S. Ct. 574, 576, 65 L. Ed. 1048, wherein this court said:

> "Before a party can impeach his own witness on grounds of hostility or surprise, there must be a showing that the surprise is *substantial* and in addition must relate to *material* facts in the case."

This court has always zealously guarded the right of a defendant to have a fair trial as held in *Johnson* v. *United States*, 218 U. S. 189, 87 L. Ed. 704, and *Minker* v. *United States* (C. C. A. 3), 85 F. (2d) 425. In the case of *Johnson* v. *United States*, 218 U. S. 189, 196, 87 L. Ed. 704, 711, the court restated:

> "If the privilege claimed by the witness be allowed, the matter is at an end. The claim of privilege and its

allowance is properly no part of the evidence submitted to the jury and no inference can be legitimately drawn by them from the legal assertion by the witness of his constitutional right. The allowance of the privilege would be a mockery of justice, if either party is to be injuriously by it."

The petitioner charges that the lower court's decision is contrary to the present existing rule of this court as stated in *McCandless* v. *United States*, 398 U. S. 340, 347:

"It does not change the well established rule that an erroneous ruling which relates to the *substantial rights* (emphasis ours) of the party is ground for reversal unless it affirmatively appears from the whole record that it was not prejudicial."

VII. Improper Construction of Judicial Code. — The petitioner charges that if this conviction is permitted to stand it places an improper construction of Section 269 of the Judicial Code, as amended, U. S. C. A. Title 28, Section 391 as the record clearly shows the petitioner's *substantial rights* have been affected by the admission of improper evidence and the same could not be lightly erased as held by the late Honorable Justice Jackson in *Krulewitch* v. *United States*, 336 U. S. 440, 453:

"But the order of proof of so sprawling a charge is difficult for a judge to control. As a practical matter, the accused often is confronted with a hodgepodge of acts and statements by others which he may never have authorized or intended or even known about, but which help to persuade the jury of existence of the conspiracy itself. * * * The naive assumption that prejudicial effects can be overcome by instructions to the jury, *Blumental* v. *United States*, 332 U. S. 539, 559, all practicing lawyers know to be *unmitigated fiction.*"

Petitioner respectfully shows to the court that the questions of law raised in this case have never before been presented in the same form and substance as presented here.

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That a very important federal question is raised here that will involve not only this petitioner but many others similarly situated.

That this Court, upon granting this petition, can once and for all clarify many federal legal questions raised and thus save itself as well as all the lower federal courts much time and expense in trying cases of similar nature and kind that have so far departed from the accepted and usual course of judicial proceedings.

If this case is permitted to stand, it can affect thousands of people engaged in theatrical and entertainment work as they would never know when they could legally transport a female in interstate commerce to work in some area such as Calumet City, Illinois; Reno, Nevada; Hollywood California, and hundreds of other similar localities throughout the United States for entertainment purposes without being later subjected to an indictment for violation of the White Slave Act because some United States District Attorney felt that some of the alleged acts might "eventually" cause some said female to lead a life of debauchery.

VIII. Lower Court Misconstrued Recognized Rules of Law of This Land.—Petitioner charges that the lower court completely misconstrued the recognized rule of law relating to criminal and unauthorized acts of agents and employees contrary to *American Surety Co.* v. *Pauley* (No. 1), 170 U. S. 133, 156, 158, 159, 18 S. Ct. 552, 561, 42 L. Ed. 977:

> "The presumption that the agent informed his principal of that which his duty and the interests of his principal required him to communicate does not arise where the agent acts or makes declarations not in execution of any duty that he owes to the principal, nor within any authority possessed by him, but to subserve simply his own personal ends or to commit

some fraud against the principal. In such cases the principal is not bound by the acts or declarations of the agent unless it be proved that he had at the time actual notice of them, or having received notice of them, failed to disavow what was assumed to be said and done in his behalf!"

The petitioner offers as a further reason for the granting of this writ that this case and the facts surrounding it present one that should be declared by this Court to be an exception of the recognized general rule of law relating to petitioner's demand for a bill of particulars, in this, that due to the very nature of the indictment and the charge therein being that of employment, the petitioner was entitled to know, as requested in his bill of particulars, whether or not he would be faced with the environment of the place of employment of the girls named in the indictment or the general area of Calumet City.

IX. Failure to Grant Bill of Particulars.—The failure to grant this bill of particulars under the circumstances violated the petitioner's constitutional rights as provided by the Sixth Amendment to the Constitution of the United States, wherein said amendment provides: "In all criminal prosecutions, the accused shall enjoy the right * * * to be informed of the nature and cause of the accusation * * *; the failure to fully advise the petitioner of what he was faced with and accused of resulted in his being caught by surprise at the trial and of matters over which he had no knowledge or control.

Therefore, the lower court's decision is so inconsistent in theory that it leaves the intent and meaning of the statutes in question in a state of confusion and is of such a nature that there should be an early and definite ruling on the same by the United States Supreme Court.

CONCLUSION.

In conclusion, petitioner earnestly prays that a writ of certiorari issue. The novel and unsound theory of this case, as well as the numerous constitutional and important Federal questions raised make it imperative that they be settled once and for all by this Court.

Respectfully submitted,

BERT C. CHEATHAM,
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October 14, 1954.

APPENDIX A.

IN THE UNITED STATES COURT OF APPEALS

For the Seventh Circuit.

No. 11042. October Term, 1953—April Session, 1954.

UNITED STATES OF AMERICA, *Plaintiff-Appellee,*

vs.

ANTHONY G. "AMOS" AMADIO, *Defendant-Appellant.*

Appeal from Judgment of the United States District Court for Southern District of Indiana, Evansville Division.

August 30, 1954.

Before MAJOR, *Chief Judge,* LINDLEY and SCHNACKENBERG, *Circuit Judges.*

SCHNACKENBERG, *Circuit Judge.* Defendant appeals from a judgment of the District Court, based upon a jury's verdict, adjudging him guilty of violating §§ 2421, 2422, title 18, U. S. C. A., commonly referred to as the White Slave act.

1. He contends that the District Court erred in overruling his motion, which was seasonably made, to dismiss the indictment on the ground that it does not state facts sufficient to constitute an offense against the United States.

The jury found the defendant guilty on counts I and IV and not guilty on counts II, III and V.

Do counts I and IV set forth federal criminal offenses?

The gist of count I is a charge that defendant induced Frieda West to travel in interstate commerce for an immoral purpose, and the gist of count IV is that he and one Craig transported Mary Katherine Hamilton in interstate commerce for an immoral purpose.[1]

Count I reads as follows:

> "That on or about August 30, 1952, Anthony G. ("Amos") Amadio did unlawfully and knowingly induce Frieda West to travel in interstate commerce from Evansville, State of Indiana, in the Evansville Division of the Southern District of Indiana, to Chicago Heights, State of Illinois, for an immoral purpose, to wit, to place her in employment and environment in Calumet City, Illinois, which would tend to cause her to give herself up to a condition of debauchery which would eventually and naturally lead to a course of sexual immorality. Anthony G. ("Amos") Amadio thereby caused the said Frieda West to go and to be transported as a passenger from Evansville, Indiana, to Chicago Heights, Illinois, upon the lines of the Chicago and Eastern Illinois Railroad, a common carrier."

§ 2422 reads as follows:

> "Whoever knowingly persuades, induces, entices, or coerces any woman or girl to go from one place to another in interstate or foreign commerce, or in the District of Columbia or in any Territory or Possession of the United States, for the purpose of prostitution

1. Counts II and III refer to other females, and count V charges that the defendant on or about September 18, 1952, unlawfully and knowingly induced Mary Katherine Hamilton, a fifteen year old girl, to travel in interstate commerce, with the intent and purpose that she be induced to engage in prostitution, debauchery, and another immoral practice, to wit, to work and to reside in Calumet City, Illinois, in an environment which would tend to cause her to give herself up to a condition of debauchery which would eventually and naturally lead to a course of sexual immorality and thereby caused her to go and to be transported as a passenger on a railroad from Evansville, Indiana, to Chicago Heights, Illinois.

or debauchery, or for any other immoral purpose, or with the intent and purpose on the part of such person that such woman or girl shall engage in the practice of prostitution or debauchery, or any other immoral practice, whether with or without her consent, and thereby knowingly causes such woman or girl to go and to be carried or transported as a passegner upon the line or route of any common carrier or carriers in interstate or foreign commerce, or in the District of Columbia, or in any Territory or Possession of the United States, shall be fined not more than $5,000 or imprisoned not more than five years, or both."

Count I charges in the language of the statute that defendant knowingly induced Frieda West to travel in interstate commerce for an immoral purpose and thereby caused her to go and to be transported as a passenger upon the lines of the Chicago and Eastern Illinois Railroad from Indiana to Illinois. It charges a criminal offense under § 2422.

The term "immoral purpose", by reason of association with the term "prostitution", is restricted in meaning to immorality consisting of sexual debauchery (*U. S.* v. *Lewis*, 110 F. (2) 460, 462; *Burgess* v. *U. S.*, 294 F. 1002, 1004) and, as thus limited, the language of the statute furnishes a sufficiently definite description of the condemned conduct. *U. S.* v. *Lewis, supra*, 462. Furthermore, there is transportation for an immoral purpose if there is transportation of a female for the purpose of having her "engage in acts which tend ultimately to lead to that form of debauchery or immoral conduct which consists in 'sexual actions' ". *Burgess* v. *U. S., supra*, 1004. Count I goes further and sets forth what the specific immoral purpose of the defendant was. This purpose is stated to be "to place her in employment and environment in Calumet City, Illinois, which would tend to cause her to give herself up to a condition of

debauchery which would eventually and naturally lead to a course of sexual immorality". Whether or not it was necessary to thus specifically state the immoral purpose, it is unnecessary for us to decide. Having stated it in such detail, the question arises as to whether such purpose as thus stated in detail is likewise within the condemnation of the statute. We hold that if the purpose of the defendant was, as alleged, to place the transported girl in employment surrounded by influences which would tend to induce her to give herself up to a condition of debauchery which eventually and naturally would lead to a course of sexual immorality, then an offense was charged under § 2422. *Athanasaw, et al.* v. *U. S.*, 227 U. S. 325, 57 L. Ed. 528, 530.

There was therefore no error committed by the District Court in denying the motion to dismiss as to count I.

Count IV reads as follows:

> "That on or about August 16, 1952, Anthony G. ("Amos") Amadio and Grover C. Craig did unlawfully and knowingly transport Mary Katherine Hamilton in interstate commerce from Evansville, State of Indiana, in the Evansville Division of the Southern District of Indiana, to Calumet City, State of Illinois, for an immoral purpose, to wit, to place her in employment and environment in Calumet City, Illinois, which would tend to cause her to give herself up to a condition of debauchery which would eventually and naturally lead to a course of sexual immorality."

The pertinent parts of § 2421, title 18, U. S. C. A., read as follows:

> "Whoever knowingly transports in interstate or foreign commerce, or in the District of Columbia or in any Territory or Possession of the United States, any woman or girl for the purpose of prostitution or debauchery, or for any other immoral purpose, or with the intent and purpose to induce, entice, or compel

such woman or girl to become a prostitute or to give herself up to debauchery, or to engage in any other immoral practice;

* * * * *

Shall be fined not more than $5,000 or imprisoned not more than five years, or both."

Count IV charges an offense under § 2421 in the language of the statute and states in detail, as does Count I, what the immoral purpose of the defendant was.

No error was committed by the District Court in denying the motion to dismiss count IV.

2. On the same day that defendant filed a motion to dismiss the indictment he also filed a motion for a written bill of particulars calling for details of the government's case against him. The motion for a bill of particulars was denied and it is urged by the defendant that this was error. The details called for by this motion are many and constitute eleven pages of the printed transcript of record herein.

In view of the clear language of counts I and IV of the indictment, including the detailed definition of the term "an immoral purpose", we think that the District Court did not abuse its discretion in denying the motion for a bill of particulars. Nothing in the record before us indicates that defendant was prejudiced thereby. In *Wong Tai* v. *United States*, 273 U. S. 77, at 82, the court said:

> "The application for the bill of particulars was one addressed to the sound discretion of the court, and, there being no abuse of this discretion, its action thereon should not be disturbed. See *Rosen* v. *United States*, 161 U. S. 29, 40; *Dunlop* v. *United States*, 165 U. S. 486, 491; *Knauer* v. *United States* (C. C. A.), 237 Fed. 8, 13; *Horowitz* v. *United States* (C. C. A.), 262 Fed. 48, 49; *Savage* v. *United States* (C. C. A.), 270 Fed. 14, 18. And there is nothing in the record indicating that the defendant was taken by surprise in the progress of the

trial, or that his substantial rights were prejudiced in any way by the refusal to require the bill of particulars. See *Connors* v. *United States*, 158 U. S. 408, 411; *Armour Packing Co.* v. *United States*, 209 U. S. 56, 84; *New York Central R. R.* v. *United States*, 212 U. S. 481, 497."

3. Defendant contends that his conviction was not supported by substantial evidence and that it was the duty of the trial court to direct an acquittal.

There is evidence in the record tending to prove the facts as set forth below.

Amadio (hereinafter referred to as defendant) was, at the time of the trial, 38 years old. He was the owner of a tavern on State Street in Calumet City, Illinois, known as the Derby Club. It was located in a two-block section which included 26 taverns and night clubs, 19 of which featured entertainment primarily of a sexual nature. Almost all of the taverns and night clubs had "B girls". This term indicates that they were engaged in soliciting drinks from men customers. These drinks were bought and consumed on the premises and the "B girls" received a commission upon the sales. They sat on the laps of men customers and exposed various parts of their bodies, all parts of which were fondled by men customers, who embraced these girls.

In most of the places which featured entertainment, it consisted of floor-shows in which the women entertainers engaged in the gradual removal of their clothes until they were practically nude. Some of these entertainers also performed the duties of "B girls". These places were open from 6 A. M. to 4 A. M., and some, including the Derby Club, operated seven days a week. A woman, who came into the Derby Club, took off all her clothes except a garter belt and hose and asked customers to buy her a drink. She was not ejected from the tavern.

In the same section was another tavern known as the Four Aces, above which the girl employees of defendant slept, three in a bed. This building was owned by defendant whose brother was operating it under a lease. In walking directly from the Derby Club to these sleeping quarters, it was necessary to pass other taverns. Defendant gave his girl employees money to see the shows in this area and they saw most of them.

Photographs in evidence, taken at night, show both sides of State Street lined predominantly with taverns, all of which emblazon in brightly illuminated signs the operators' characterization of what may be found within. Typical are "Little Club—All Girl Show", "All Girl Revue", "Floor Show", "Lovely Girls", "Salome's Dance of the Seven Veils", "Show Club—Exotic Girls".

The foregoing conditions existed from August, 1952, and through early 1953.

Defendant had some interests in oil wells near Evansville, Indiana, and made trips to that city where Craig, his nephew, lived. Craig, on one or two occasions, made trips to Calumet City with defendant to visit his brother who was playing in a band there. Defendant told Craig that if at any time Craig "found a girl", defendant would give him "money for a ticket to send her up" and in accordance with this arrangement he had given Craig money on one or two occasions.

Mary Katherine Hamilton, in 1952, was fifteen years old and was living with her mother and stepfather in Evansville, Indiana. She knew Craig. In 1952, Craig introduced her to defendant who offered her a job as a waitress in Calumet City if her mother would sign a paper stating that she was eighteen years old and consenting to the employment. She needed a job because her stepfather was in the penitentiary. Defendant wrote a note and she had

her mother sign it. Thereupon, in the last part of August, 1952, defendant and Craig took Mary in defendant's Cadillac car to Calumet City. This was the first time she had gone away from home to work. They arrived in Calumet City at 2 A. M. and defendant gave Mary a room above the Four Aces Club. The next evening she went to the Derby Club and was assigned to work as a "B girl" and was instructed to ask men to buy her drinks. The bartender at the Derby Club, a Mrs. Johannas, told her to get all the drinks she could and "see what I could do with the guys". At her request, men bought her drinks. They were actually non-alcoholic. She got a commission on all sales which she procured and she also was guaranteed a salary of $40 per week. This arrangement was made with defendant and Craig before Mary went to Calumet City. From her weekly salary $10 was deducted to pay for her room rent above the Four Aces.

The Derby Club was operated in a large room with a bar and booths in the front and in the back. There was a band. Mary worked in the front booths. If a customer would buy a higher priced drink, the waitress took him to the back booths where it was darker. Defendant said "that where the guys can feel around." Mary saw one "B girl" take a man to a back booth where he bought her drinks and "made love to her".

After Mary had been there quite a while, Mrs. Johannas told her that she could "take guys out for intercourse and make some money that way" after she got off from work at night.

During her third week at the Derby Club, Craig followed her to her room above the Four Aces and unsuccessfully attempted sexual intercourse with her. Two or three days later, defendant came to her room in the early morning after she had finished work and forced her to have inter-

course with him. He then told her that "he could make dates for me with these oil field workers to come in and I could make quite a bit of money off of them if I would have intercourse with them."

In August, 1952, Craig, with two girl friends of Frieda West, came to her home in Evansville, Indiana, at 6:30 A. M. and asked if she wanted to go to Calumet City to work at the Derby Club as a hostess. It was arranged that she and the other two girls would go by train to Chicago Heights. At 3 P. M. that day, Craig took the three girls to the train station, bought their tickets, and put them on the train, telling them to call the Derby Club upon their arrival and they would be picked up. When they reached Chicago Heights they telephoned the Derby Club and defendant and his brother picked them up, after which they went to defendant's home where they were placed in another car and driven by defendant's brother to the Four Aces. There they were given a room and thereupon were employed as "B girls" at the Derby Club.

Mrs. Johannas told Frieda that "she thought I had more brains than the rest of the girls did and if I would come down to the Club during the day she would show me how to make more money than what I could make off the 'B' drinks of the night." She also said that "there was a fellow * * * who wanted to go to a hotel * * * there was a back room there with a day bed that could be used in the back of the Derby Club * * * whatever we made we was supposed to split it—with the cash register."

Frieda stayed in Calumet City one week. Defendant then drove her home to Evansville and asked her to go back to Calumet City, but she refused.

In answer to his counsel's question, defendant testified that he gave attention a couple of hours a week to the management of the Derby Club.

Defendant says that this case raises an issue of whether or not the evidence shows that these girls were employed in an environment which would tend to cause them to give themselves up to a condition of debauchery, which would eventually and naturally lead to a course of sexual immorality, making interstate transportation of them for such employment a federal offense. We think that the foregoing evidence does so show.

"Environment" means the surrounding conditions, influences, or forces, which influence or modify, and "social environment" comprises everything to do with human activity. Webster's New International Dictionary.

In the case at bar, both the employment and the environment had a tendency to cause these girls to give themselves up to a condition of debauchery.

Employment of these girls by defendant in his tavern required them to work nearly all night, seven days a week, in a bar room where gross lewdness and sexual immorality were not only tolerated, but the very arrangement of the booths and instructions to the girls show that, at all times, the predominating motif was sexual over-indulgence. These girls were required by the defendant to live above another tavern where they were the accessible sexual prey for defendant and Craig, who served as a lackey and girl procurer for defendant. Their employment brought them into nightly contact with a female bartender who gave the girls their instructions. This woman's sense of morality was such that she suggested to both of these girls that they make money by prostituting themselves, one-half of the proceeds to go to the Derby Club. This female promoter of prostitution was as much a part of the environment in which the defendant placed these girls as were the dimly lighted booths and the bar. Defendant's testimony that he was at the Derby Club only a couple of hours

a week, elicited by a question from his own counsel, was obviously an attempt by defendant to disclaim responsibility for what transpired there. No doubt the jury, as the triers of the facts, did not believe defendant's disclaimer of responsibility.

The businesses in the area, in which the Derby Club and the girls' sleeping quarters were located, were operated to the accompaniment of a blatant emphasis on sexual activity. Nearly the entire area of two blocks was devoted to taverns and night clubs which, both inside and outside, featured lewdness. It is a matter of common knowledge that when a sign in such an area advertises exotic girls it means erotic girls. Both the place of employment and the place of habitation of the girls mentioned in counts I and IV of the indictment were located in the very midst of a concentrated area of vicious sexual immorality. Defendant saw to it that these girls would learn about their environment. He supplied them with money to attend the night clubs, nineteen of which featured entertainment primarily of a sexual nature.

Life as a "B girl" in defendant's tavern, with its surrounding conditions, would not only tend to cause a girl to give herself up to a condition of debauchery, which would eventually and naturally lead to a course of sexual immorality, but any other result could not reasonably be expected. There was substantial evidence to support the verdict and the trial court committed no error in refusing to direct an acquittal of the defendant.

4. Defendant urges that the trial court erroneously permitted the district attorney to elicit from his own witness, Mary Katherine Hamilton, testimony of the conversation which the witness said she had with Mrs. Johannas, the bartender in the Derby. As above pointed out, on that occasion Mrs. Johannas is alleged to have suggested to Mary

that she engage in prostitution. Defendant contends that the introduction of this evidence amounted to an attempt to bind the defendant, as principal, with the statements of an employee made out of the presence of the defendant. This evidence was not offered on the theory of agency. It was offered and admitted on the theory that the presence of Mrs. Johannas, as bartender, who gave the instructions to the girl employees, and her attitude expressed to them in regard to sex matters, were a part of the tavern environment into which defendant placed Mary. For that purpose we feel that the evidence was admissible.

When the government witness, Frieda West, testified to a similar suggestion made to her by Mrs. Johannas and the trial court indicated that it was admissible to show environment, defendant's counsel had the court instruct the jury that this evidence should be considered only for the purpose of showing environment.

5. The government called Geno Sarbo as its witness. When asked, on direct examination, whether he had ever been up above the Four Aces in 1952, he stated that he did not remember; he did not think so. He was later asked, "Did you testify that you have not been in the Four Aces, to the best of your recollection; that is what you stated?" He answered "I don't think so". He was then asked whether he had observed any change in the general conditions in the area where the Four Aces Club was located during the year 1952. The witness stated at first that he did not know what was meant by "change". After an explanation by counsel he said that he "guessed" that conditions were substantially the same at the latter part of 1952 as they were throughout the year, but when asked if that was his opinion he said he was not sure. The government counsel argued that he had a right to impeach this witness because "the prosecution is under a legal duty to call" him. The court remarked "He has made other in-

consistent statements". The court thereupon permitted government counsel to ask if it was not true that Sarbo told an F. B. I. agent, named Riley, that he had taken a girl named Patricia Swartz up above the Four Aces and had had sexual relations with her. The court held that Sarbo was a hostile witness. The witness refused to answer on the ground that his answer might incriminate him. He specifically refused to answer, on the ground of self-incrimination, as to whether he did, in fact, take girls up above the Four Aces in 1952 and have relations with them. The court continued to overrule objections to other such questions as they were asked and the witness continued to claim immunity from self-incrimination. Upon examination by defendant's counsel, Sarbo charged government counsel with having intimidated him on the day before by mentioning his prior arrests and speaking of perjury. He also testified that he was then informed by government counsel that he could claim immunity from testifying.

The government then called a witness, Mary Patricia Swartz, and questioned her, evidently in an attempt to have her admit having had intercourse with Sarbo in the Four Aces Club in December, 1952, or January, 1953. She refused to answer on the ground that she "did not want to incriminate" herself. The jury, being excluded, the court referred to the witness as a "hostile witness". During a colloquy between court and counsel, defendant's counsel requested the court to instruct the jury to disregard the conduct of the witness and that it was not to be prejudicial or held against the defendants.[1]

1. At the conclusion of the trial the court did give the following instruction: The fact that during the course of this trial certain witnesses called by the Government have refused to answer certain questions directed to them which may have had some bearing on this case, should not be construed against the defendants in any way, since the said witnesses, by so refusing to answer, were merely standing upon their constitutional right not to subject themselves, by self-incrimination, to possible criminal prosecution.

In the presence of the jury Miss Swartz said that she was at the Four Aces Club in January or February, 1953, but she refused to answer whether she was there with Sarbo on the ground that her answer might incriminate her.

The jury, being excused, Miss Swartz was asked about two statements which she gave to F. B. I. agent Riley. She admitted that government counsel, before she was called as a witness, asked if she was ever upstairs in the Four Aces, and that she had answered "Yes." Thereupon, government counsel told her that "We are having you down here to ask you one question" and that she said "What if I don't want to answer it?" and the attorney said "You will have to."

The court indicated that she was privileged to refuse to answer the question.

However, in the presence of the jury, government counsel asked Miss Swartz if she had not, in February, 1953, told agent Riley that she had relations with Sarbo at the Four Aces in January, 1953. She answered in the affirmative and stated that "First I replied no" and then she answered "Yes". She testified that a couple of days later in another interview with Riley she did not say that she had intercourse with Sarbo above the Four Aces in January, 1953, "Because every time I would answer yes he would say 'oh you mean no' ". She added "He was getting me all mixed up". She said she was 18 years old and was a bartender.

We think it is clear that the government knew before these two witnesses were called to testify that they intended to refuse to answer the questions deemed by the government to be pertinent to the case on trial, on the ground of their constitutional privilege against self-incrimination. In view of that fact it was improper for the gov-

ernment to attempt to force them to testify. *U. S.* v. *Hiss*, 185 F. (2) 822, 832. In the *Hess* case the court told the jury, when the witness who claimed his privilege against self-incrimination, left the stand, "to draw no inference unfavorably to this defendant because of the fact that this witness * * * has claimed immunity." The court, at page 832, said:

> "We do not now say that such an abuse might not sometime occur so as to require reversal, but we find no such abuse occurred below."

In the case at bar the proceedings involving the witnesses Sarbo and Swartz involve a most clumsy handling of the government's case, which might well have affected the jurors adversely to the government. Government counsel were responsible for leading the court to commit error. The effect of the error was in part erased by the cautionary instruction given by the court. The prejudice, if any there be, was of such character that it might be cured by an instruction to disregard. *Weinbaum* v. *U. S.*, 184 F. (2) 330. Moreover, the evidence which actually permeated through the extended and confusing proceedings was very slight, uncertain and unconvincing. This meager evidence could not have prejudiced the jury against the defendant, especially in view of the fact that there was sufficient competent evidence in the record to support the verdict. The burden to show reversible error is on the defendant. *U. S.* v. *Reed*, 96 F. (2) 785, 786; cert. den. 305 U. S. 612. In *Guy* v. *U. S.*, 107 F. (2) 288, at 290, the court said:

> "When guilt is clearly established by competent evidence, error in the admission or exclusion of other evidence or in the charge to the jury which does not affect the substantial rights of the accused does not call for the reversal of a conviction. It has been held that the party who complains has the burden of showing that improperly admitted evidence is prejudicial. * * * No evidence which was admitted over appellant's objec-

tion, or which is open to any possible objection, materially strengthened the government's case; and no evidence which was offered by appellant, and excluded, would have materially weakened the government's case."

Cert. den. 308 U. S. 618. To the same effect is *Whitaker* v. *U. S.*, 5 F. (2) 546. Cert. den. 269 U. S. 569.

The error was not prejudicial to the defendant and is, therefore, not ground for reversal.

6. On cross-examination of the defendant, the government attorney asked him whether he had not been convicted of disorderly conduct in Chicago. The court overruled an objection to the question and the defendant denied such a conviction.

In view of all the evidence in this case, we cannot say that the defendant was thereby prejudiced.

In its brief in this court the government makes no mention of this matter except to state categorically that "We deny the general proposition of law stated in proposition XI". The brief as to this matter, as well as many other phases of this case, is woefully inadequate.

7. Defendant urges that the trial court committed error in denying his motion for a mistrial following the admission of testimony of Edwin Keck, a newspaper reporter from Hammond, Indiana.

Keck had testified in considerable detail to conditions as he saw them in the two-block area in which defendant's tavern and the sleeping quarters for his girl employees were located. He described objectively the action of the "B girls" and entertainers. At different times he characterized this conduct as vulgar, lurid or lewd. When objections were made to such conclusions by the witness they were sustained. It is obviously difficult for a witness to describe lewd conduct in words without using such ad-

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jectives as were objected to in this case. However, his detailed description of what he actually saw was before the jury and we feel that there was no error in denying the motion for mistrial.

8. Defendant points to 14 instructions tendered by him and refused by the court. He claims they should have been given. We have examined each of them carefully and find that there was no error committed in their refusal. Some of them are repetitious of given instructions, others are not applicable to the issues upon which this case was tried and the remaining ones state incorrect propositions of law.

For the reasons hereinbefore set forth, the judgment of the District Court should be and is hereby

AFFIRMED.

MAJOR, *C. J.*, dissenting. My study of the record leads to the firm conclusion that defendant did not have a fair trial, and I feel obliged to register a dissent. In doing so, I realize the futility of any extended discussion, and shall attempt to confine myself to a few of the errors which are typical of many others.

First, with reference to the indictment. I do not disagree with the conclusion of the majority that the allegations of the indictment comport with language contained in the statute. The difficulty arises from the fact that each count in question goes far beyond the statutory provisions. There is nothing in the statute which proscribes the transportation of a female in an "environment" which "would tend to cause her to give herself up to a condition of debauchery which would eventually and naturally lead to a course of sexual immorality." Whether this allegation foreign to the language of the statute invalidated the indictment need not be resolved in dissent; however, it can hardly be doubted but that it created an issue by which

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the trial court was led astray and which was utilized by the government to obtain the admission of much incompetent testimony.

The government in its brief states, "This was a White Slave Traffic Act case brought under the construction of such Act in the cases of *Athanasaw* v. *United States* (1913), 227 U. S. 326, and *United States* v. *Lewis* (C. A. 7, 1940), 110 F. (2d) 460. The indictment was couched in the language of the indictment in the *Lewis* case." This must be a novel theory and I think unsound. It has always been the rule, so far as I am aware, that an indictment must be predicated upon the language of a statute, upon the matters thereby proscribed, rather than upon language used by a court in discussing the statute. Moreover, the indictment was not "couched in the language of the indictment in the *Lewis* case." There, it was alleged (page 462) that the transportation was for an immoral practice, to wit, "prostitution and debauchery." There was no such indefinite and uncertain language as "environment" or "tend to cause" or "which would eventually and naturally lead to a course of sexual immorality." Neither was there such language in the indictment of the *Athanasaw* case. There, it was alleged that the transportation was "for the purpose of debauchery." It is true that in both of those cases the court discussed and held that the environment in which the girls were placed was a material factor in proving the charges alleged. But a reading of the opinions in those cases discloses that they furnish little, if any, support for the theory pursued by the government in the instant case, which, as the record discloses, was reluctantly followed by the trial court.

A person unacquainted with the charge would obtain the impression that the sole issue in the case was the environment of a two-block section contained in Calumet City. On this premise, all kinds of evidence calculated to

inflame the minds of the jury and create prejudice against the defendant was admitted, which cannot possibly be justified by any rule of which I am aware. Some of this evidence is referred to in the majority opinion, and as shown, statements made out of the presence of the defendant and activities with which he had no connection were shown, all on the issue of environment. The majority opinion gives a fair summary of the government's impeachment of its witnesses, Sarbo and Swartz, by showing statements they had previously made to agents of the F. B. I. It was not shown and it is not claimed that defendant was connected with any of the statements or events related in this testimony. The majority concedes that this was error, with which I agree. To say that it involves "clumsy handling" by government's counsel is a temperate characterization, and to me the view is inescapable that this performance by government's counsel was prejudicial to defendant. More than that, the majority in disposing of this issue states, "The burden to show reversible error is on the defendant." I think that is an erroneous pronouncement, and even the cases relied upon furnish little, if any, support. In *McCandless et al.* v. *United States,* 298 U. S. 342, 347, the court stated, "• • an erroneous ruling which relates to the substantial rights of a party is ground for reversal unless it *affirmatively* appears from the whole record that it was not prejudical." See also *Bihn* v. *United States,* 328 U. S. 633, 638. In *Kotteakos et al.* v. *United States,* 328 U. S. 750, 764, the court stated, "And the question is, not were they [the jury], right in their judgment, regardless of the error or its effect upon the verdict. It is rather what effect the error had or reasonably may be taken to have had upon the jury's decision. The crucial thing is the impact of the thing done wrong on the minds of other men, not on one's own, in the total setting."

These cases and many others which could be cited support the rule that when an error has been shown or admitted relating to the substantial rights of a party, it is grounds for reversal unless it affirmatively appears from the record that it was not prejudicial. If in the mind of the reviewing court the error was calculated to prejudice the rights of the defendant, or even if the court is in doubt on that score, it is the duty to reverse.

A government witness, an admitted prostitute by the name of Juanita Rose Cooper, was permitted to testify that she had sexual relations in a room above the Four Aces with a man whom she knew only as Frank, in January, 1953. This was some four months subsequent to the time the girls named in the two counts of the indictment under consideration were transported. More than that, it was some three months after the girls so named had returned to their homes in Indiana. There was no showing that the witness Cooper's alleged acts were known to the defendant at any time, much less at the time of the transportation, nor was her conduct known to the girls named in the indictment. A government witness, Virginia Warren, was permitted to testify that she was in the Derby Club in December, 1952, when an intoxicated girl from the street came in, took off her clothes and asked for somebody to buy her a drink. Again, this incident took place long after the transportations in question and after the transportees had returned to their homes in Indiana. The court approved an instruction in the *Athanasaw* case (227 U. S. 326), "The intent and purpose of the defendant at the time of the furnishing of this transportation * * * is the very gist and question in this case."

The testimony of government's witness, Ann Christine Cresno, was, in my view, highly prejudicial to defendant. It occupies seven pages of the printed transcript and consists in the main of a harangue between counsel and the

court regarding the attempt to obtain from this witness the admission that in 1952 she had performed abortions in the two-block area in question. This the witness denied and, upon being declared a hostile witness by the court, the government's counsel was permitted to cross-examine her. Finally, for the purpose of impeachment I suppose, the witness was asked if she had not in a conversation with F. B. I. agents stated that she had performed such abortions. She denied making such a statement. After the government laid the basis for impeachment of this witness, the record discloses that no effort was made to do so.

The character of the charge in this case was such as to make it difficult for a defendant to obtain a fair trial. It was grossly unfair for the government to attempt to create in the minds of the jury the belief that Calumet City was an abortion center. The fact that it did not succeed was not likely to remove from their minds the damaging effect of the effort.

The majority opinion refers to the fact that on cross-examination of the defendant the government attorney inquired whether he had previously been convicted of disorderly conduct. This the defendant denied. After laying a basis for impeachment, the government made no effort to prove that defendant's denial was false. Defendant in his brief states there was no such conviction, "which the District Attorney well knew never existed and was done solely to prejudice the jury against the defendant." A serious charge has thus been leveled at government's counsel. No denial or explanation is attempted. Counsel's conduct was reprehensible if the question complained of was asked with knowledge that there was no record of a conviction. If the question was asked through a mistaken belief that such a record existed, fairness required as a minimum that it be admitted, not ignored. Assuming that

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this incident alone would not constitute prejudicial error, it is significant when added to the accumulation of errors which in their totality should, in my opinion, be held to constitute reversible error. Paraphrasing the language of Mr. Justice Jackson in *Krulewitch* v. *United States,* 336 U. S. 440, 453, defendant was confronted with a hodge-podge of acts and statements by strangers, which he did not authorize and about which he had no knowledge, which in all probability helped persuade the jury that the transportations in question were for the purpose denounced by the statute.

APPENDIX B.

Federal statutes involved as passed by Congress:

18 U. S. C. Section 2421. Transportation generally.—

Whoever knowingly transports in interstate or foreign commerce, or in the District of Columbia or in any Territory or Possession of the United States, any woman or girl for the purpose of prostitution or debauchery, or for any other immoral purpose, or with the intent and purpose to induce, entice, or compel such woman or girl to become a prostitute or to give herself up to debauchery, or to engage in any other immoral practice; or

Whoever knowingly procures or obtains any ticket or tickets, or any form of transportation or evidence of the right thereto, to be used by any woman or girl in interstate or foreign commerce, or in the District of Columbia or any Territory or Possession of the United States, in going to any place for the purpose of prostitution or debauchery, or for any other immoral purpose, or with the intent or purpose on the part of such person to induce, entice, or compel her to give herself up to the practice of prostitution, or to give herself up to debauchery, or any other immoral practice, whereby any such woman or girl shall be transported in interstate or foreign commerce, or in the District of Columbia or any Territory or Possession of the United States—

Shall be fined not more than $5,000 or imprisoned not more than five years, or both. (June 25, 1948, c. 645, § 1, 62 Stat. 812; May 24, 1949, c. 139, § 47, 63 Stat. 96.)

18 U. S. C. Section 2422. Coercion or enticement of female.

Whoever knowingly persuades, induces, entices, or coerces any woman or girl to go from one place to

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another in interstate or foreign commerce, or in the District of Columbia or in any Territory or Possession of the United States, for the purpose of prostitution or debauchery, or for any other immoral purpose, or with the intent and purpose on the part of such person that such woman or girl shall engage in the practice of prostitution or debauchery, or any other immoral practice, whether with or without her consent, and thereby knowingly causes such woman or girl to go and to be carried or transported as a passenger upon the line or route of any common carrier or carriers in interstate or foreign commerce, or in the District of Columbia or in any Territory or Possession of the United States, shall be fined not more than $5,000 or imprisoned not more than five years, or both. (June 25, 1948, C. 645, § 1, 62 Stat. 812.)

Constitution of the United States, Article I, Paragraph 8, sub-section 18.

To make all laws which shall be necessary and proper for carrying into execution the foregoing powers, and all other powers vested by this constitution in the government of the United States, or in any department or officer thereof.

Constitution of the United States, Fifth Amendment.

No * * * shall be deprived of life, liberty or property without due process of law.

Constitution of the United States, Sixth Amendment.

In all criminal prosecutions, the accused shall enjoy the right * * *, to be informed of the nature and cause of the accusation * * *.

28 U. S. C., Section 1254.

(1) By writ of certiorari granted upon the petition of any party to any civil or criminal case, before or after rendition of judgment or decree.

28 U. S. C., Section 1291.

The courts of appeals shall have jurisdiction of ap-

peals from all final decisions of the district courts of the United States, the District Court for the Territory of Alaska, the United States District Court for the District of the Canal Zone, and the District Court of the Virgin Islands, except where a direct review may be had in the Supreme Court.

Section 269, Judicial Code, as amended by 28 U. S. C. A., Section 391.

All United States courts shall have power to grant new trials, in cases where there has been a trial by jury, for reasons for which new trials have usually been granted in the courts of law. On the hearing of any appeal, certiorari or motion for a new trial, in any case, civil or criminal, the court shall give judgment after an examination of the entire record before the court, without regard to technical errors, effects, or exceptions which do not affect the substantial rights of the parties.

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APPENDIX C.

UNITED STATES DISTRICT COURT

Southern District of Indiana,

Evansville Division.

UNITED STATES OF AMERICA
vs.
ANTHONY G. ("AMOS") AMADIO
GROVER C. CRAIG
} No. 952 Criminal.

COUNT I. 18 U. S. C., Sec. 2422.

The Grand Jury charges:

That on or about August 30, 1952, Anthony G. ("Amos") Amadio did unlawfully and knowingly induce Frieda West to travel in interstate commerce from Evansville, State of Indiana, in the Evansville Division of the Southern District of Indiana, to Chicago Heights, State of Illinois, for an immoral purpose, to wit, to place her in employment and environment in Calumet City, Illinois, which would tend to cause her to give herself up to a condition of debauchery which would eventually and naturally lead to a course of sexual immorality. Anthony G. ("Amos") Amadio thereby caused the said Frieda West to go and to be transported as a passenger from Evansville, Indiana, to Chicago Heights, Illinois, upon the lines of the Chicago and Eastern Illinois Railroad, a common carrier.

COUNT II. 18 U. S. C., Sec. 2421.

The Grand Jury further charges:

That on or about June 7, 1952, Anthony G. ("Amos") Amadio did unlawfully and knowingly transport Esther Wolf in interstate commerce from Evansville, State of Indiana, in the Evansville Division of the Southern District of Indiana, to Calumet City, State of Illinois, for an immoral purpose, to wit, to place her in employment and environment in Calumet City, Illinois, which would tend to cause her to give herself up to a condition of debauchery which would eventually and naturally lead to a course of sexual immorality.

COUNT III. 18 U. S. C., Sec. 2421.

The Grand Jury further charges:

That on or about June 7, 1952, Anthony G. ("Amos") Amadio did unlawfully and knowingly transport Bonnie Jean Chandler in interstate commerce from Evansville, State of Indiana, in the Evansville Division of the Southern District of Indiana, to Calumet City, State of Illinois, for an immoral purpose, to wit, to place her in employment and environment in Calumet City, Illinois, which would tend to cause her to give herself up to a condition of debauchery which would eventually and naturally lead to a course of sexual immorality.

COUNT IV. 18 U. S. C., Sec. 2421.

The Grand Jury further charges:

That on or about August 16, 1952, Anthony G. ("Amos") Amadio and Grover C. Craig did unlawfully and knowingly transport Mary Katherine Hamilton in interstate commerce from Evansville, State of Indiana, in the Evansville Division of the Southern District of Indiana, to Calumet City, State of Illinois, for an immoral purpose, to wit, to place her in employ-

ment and environment in Calumet City, Illinois, which would tend to cause her to give herself up to a condition of debauchery which would eventually and naturally lead to a course of sexual immorality.

COUNT V. 18 U. S. C., Sec. 2423.

The Grand Jury further charges:

That on or about September 8, 1952, Anthony G. ("Amos") Amadio did unlawfully and knowingly induce Mary Katherine Hamilton, a fifteen year old girl, to travel in interstate commerce from Evansville, State of Indiana, in the Evansville Division of the Southern District of Indiana, to Chicago Heights, State of Illinois, with the intent and purpose that she be induced to engage in prostitution, debauchery, and another immoral practice, to wit, to work and to reside in Calumet City, Illinois, in an environment which would tend to cause her to give herself up to a condition of debauchery which would eventually and naturally lead to a course of sexual immorality. Anthony G. ("Amos") Amadio thereby caused the said Mary Katherine Hamilton to go and to be transported as a passenger from Evansville, Indiana, to Chicago Heights, Illinois, upon the lines of the Chicago and Eastern Illinois Railroad, a common carrier.

A True Bill:

/s/ GOY L. GOODE,
Foreman.

/s/ MARSHALL E. HANLEY,
United States Attorney.

APPENDIX D.

UNITED STATES DISTRICT COURT

Southern District of Indiana,

Evansville Division.

UNITED STATES OF AMERICA
vs.
ANTHONY G. ("AMOS") AMADIO,
GROVER C. CRAIG
} No. 952 Criminal.

JUDGMENT AND COMMITMENT.

On this 3rd day of October, 1953 came the attorney for the government and the defendant appeared in person and by Marion J. Rice and Bert C. Cheatham, his privately employed attorneys.

It is Adjudged that the defendant has been convicted upon his plea of not guilty and a verdict of guilty of the offense of unlawfully inducing Frieda West to travel from Evansville, Indiana to Chicago Heights, Illinois, for an immoral purpose, on or about August 30, 1952, upon the lines of the Chicago and Eastern Illinois Railroad, in violation of Title 18, U. S. C., Section 2422, as charged in Count I of the Indictment and of unlawfully transporting Mary Katherine Hamilton from Evansville, Indiana to Calumet City, Illinois, for an immoral purpose, on or about August 16, 1952, in violation of Title 18, U. S. C., Section 2421, as charged in Count IV of the Indictment, and the court having asked the defendant whether he has anything

to say why judgment should not be pronounced, and no sufficient cause to the contrary being shown or appearing to the Court,

It Is Adjudged that the defendant is guilty as charged and convicted.

It Is Adjudged that the defendant is hereby committed to the custody of the Attorney General or his authorized representative for imprisonment for a period of three (3) years under Count I of the Indictment.

It is further adjudged that the defendant is hereby committed to the custody of the Attorney General or his authorized representative for imprisonment for a period of three (3) years under Count IV of the Indictment. Said sentence under Count IV is to run concurrently with the sentence imposed herein under Count I.

It Is Ordered that the Clerk deliver a certified copy of this judgment and commitment to the United States Marshal or other qualified officer and that the copy serve as the commitment of the defendant.

(Signed) WILLIAM E. STECKLER,
United States District Judge.

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